

## PUBLIC HEARING SIGN-UP SHEET

DATE/TIME: Sept. 3, 2009 @ 6:00 PM

STAFF: CC, JC, LHK, MA, LK, BGK

CITY/ISLAND: Hoolehua, Molokai

Ct. Rptr: None (Cassette Tapes)

PLACE/ADDRESS: Mitchell Pauole Center Conference Rm., 90 Ainoa St., Kaunakakai

DKT.NO./APPLICANT: Dkt. No. 2009-0049, Wai'ola O Moloka'i, Inc.

SUBJECT: Application for Approval of Rate Increases, Revised Rate Schedules and Revised Rules

(PLEASE PRINT)

	NAME	ORGANIZATION/ADDRESS
1.	Elaine Hammond	Wai'ola O Molokai
2.	Catherine Awakuni	Division of Consumer Advocacy
3.	Jane Lovell	County of Maui
4.	Bridget A. Nowat	Molokai Citizen
5.	DeGray Vanderbilt	Molokai resident
		member Molokai Water Advisory Committee

	NAME	ORGANIZATION/ADDRESS
6.	BYRON ESPANOLA	MOLOKAIAN
7.	Sharon Pease	Kaluakoi
8.	Karen Holt	
9.	Joseph Kalipi	M'Loa Community
10.	Judy Caparida Ruth + Mann	Manae/OHana
11.	Zhantell Dudoit	Maunaloa, Hawaii (Kenani Kai)
12.	JUANITA COLON	RATE PAYER RESIDENT OF KUALAPUU

	NAME	ORGANIZATION/ADDRESS
13.	Karo MAPHESON	Box 192 433 5076 K'IKAI, HI 96748
14.	Eugene Santiago	P.O. Box 104 Kula, HI
15.	Jimmy Duvauchelle	PO Box 208 Maunaloa
16.	ESTHER VMI	P.O. Box 1
17.	Larry Ward	PO Box 460 Halekua 96729
18.		
19.		

**HAWAII PUBLIC UTILITIES COMMISSION ("Commission")  
PUBLIC HEARING ON WAI'OLA O MOLOKAI, INC.'S  
AMENDED RATE APPLICATION  
Docket No. 2008-0049**

**Public Hearing Testimony of Elaine Hammond  
Wai'ola O Molokai, Inc.  
September 3, 2009**

Good evening. My name is Elaine Hammond. I am the Treasurer of Wai'ola O Molokai, Inc. ("Wai'ola O Molokai" or the "Company"), which is a public utility authorized to provide water utility services to residential, commercial and agricultural customers since 1993. I am here tonight to speak on behalf of Wai'ola O Moloka'i in connection with our amended rate increase application filed on June 29, 2009. I would like to thank the Commission for holding this public hearing and for everyone's attendance this evening.

As you may know, Wai'ola O Molokai services businesses, residences, churches and Maui County parks located in Maunaloa, Kualapuu, Kipu, Manawainui, and the Molokai Industrial Park areas on the island of Molokai. The Company's current base rates were established in 1993, with a special temporary rate for water consumption established by the Commission in 2008 to provide the Company temporary rate relief. The increases in expenses, costs and investments in the over 16 years since these initial base rates were established, has resulted in the Company operating at a significant loss for the last several years to the point that a rate increase is now required.

While we have been able to keep our rates low over the last 16 years since they were initially established, in looking back, rate increases probably should have been sought by the Company on a more regular basis so that this proposed increase would not need to be so great. However, rate increase cases can be very expensive and these costs are typically passed through to the customer. We regret, in these tough economic times, that we must now seek such an increase, but in an effort to minimize the "rate shock" that you may experience, the Company is proposing a two stage phase-in of the new rates and charges.

In this case, we are seeking a net revenue increase of \$473,431. This amounts to an approximate 382.85% increase over pro forma revenues at the initial base rates established in 1993, and an approximate 106.96% increase from the pro forma revenues at the temporary rate currently in effect. This rate increase, if approved by the Commission, will allow us to continue providing all customers and the Molokai community with the necessary water utility services and a system that is both safe and reliable.

In addition, to help keep rates in line with changing and fluctuating electricity costs, we are also requesting approval of an Automatic Power Cost Adjustment Clause for our water service, which permits adjustments for electric costs during the year. If approved by the Commission, this adjustment clause will allow us to increase or decrease our rates based on any corresponding increase or decrease in our cost of electricity. Like most water utilities, electricity costs

comprise a significant portion of our operating expenses and we have little or no control over the level of these costs. Due to the volatility of electricity costs, we believe that the establishment of such a clause is in the public interest as it may assist in reducing the frequency of rate increase requests in the future.

Although we understand that no one looks forward to increases in the rates they are charged, our proposed increase is needed to allow us to continue to provide safe, reliable and quality water services to all of our customers. We ask that you consider the need for us to recover our reasonable costs in running our operation to allow us to continue to invest in what is needed to ensure our ability to continue to provide our customers with water services in a safe and reliable manner.

We understand that the Commission and the Consumer Advocate will closely analyze and review our request for the rate increase. We look forward to working with the Commission and Consumer Advocate, as well as our customers, in explaining and supporting our proposal and addressing any concerns. We are committed to serving our customers to the best of our abilities and ensuring fair rates and charges, and trust that the result of this regulatory process will be the development and implementation of both fair rates and a reasonable rate design for our customers.

We thank you all for your attendance at this public hearing tonight, and hope that any concerns you may have can be addressed through this regulatory process. In addition, for those of you who may not have had the opportunity to review our rate increase application, a copy of our application continues to be available for public inspection at Wai'ola O Molokai's offices at 100 Maunaloa Highway in Maunaloa, Molokai between the hours of 8:00 a.m. and 4:30 p.m., Mondays through Fridays, excluding holidays. You may also contact me by email in Honolulu at [ehammond@molokairanch.com](mailto:ehammond@molokairanch.com). If time permits and I know the answer, I will try to respond to questions that are raised this evening.

We appreciate the opportunity to make this presentation and thank you all for your attendance tonight.

Elaine Hammond, on behalf of  
Wai'ola O Molokai

**PUBLIC HEARING  
WAIOLA O MOLOKAI, INC.  
DOCKET NO. 2009-0049**

**Presentation of Catherine P. Awakuni, Executive Director  
Division of Consumer Advocacy  
Thursday, September 3, 2009, 5:00 P.M.  
Mitchell Pauole Center Conference Room**

Good evening Chairman Caliboso, Commissioner Cole, and Commissioner Kondo. I am Catherine Awakuni, Executive Director of the Division of Consumer Advocacy ("Consumer Advocate"). The Consumer Advocate represents the interests of the consumers in public utility matters. I am here this evening to listen to the consumers' comments and concerns regarding Waiola O Molokai, Inc.'s ("Waiola") request for approval to increase its rates and charges and/or revise certain other charges.

The Consumer Advocate's role is to represent the interests of all Hawaii consumers of public utility services by advocating for reliable utility services at reasonable customer costs. To do this, the Consumer Advocate is taking an independent look at Waiola's requests for Public Utilities Commission ("Commission") approval of its rate increase. We will confirm whether there is a need for the proposed rates and whether the rates proposed are necessary to ensure the provision of reliable service. After completing our review, we will file a statement of position with the Commission explaining our analysis and recommendations. At this time, the Consumer Advocate has not completed its analysis and is not able to state its position on the merits of Waiola's request this evening.

Since the Commission will ultimately decide whether to allow Waiola to proceed with its request, we encourage the public to express their opinions to the Commission regarding Waiola's proposal. Your input is important because only you can tell us what effect the company's proposal may have on you and the businesses you may represent.



As we move forward, please feel free to contact the Consumer Advocate's office at anytime to share your thoughts, concerns, and questions regarding this or any other utility matter.

Thank you for the opportunity to make this presentation.

Contacts for the Division of Consumer Advocacy:

Mail	Post Office Box 541, Honolulu, Hawaii 96809
E-mail	<a href="mailto:consumeradvocate@dcca.hawaii.gov">consumeradvocate@dcca.hawaii.gov</a>
Phone	(808) 586-2800
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Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.maui-county.gov/council](http://www.maui-county.gov/council)

September 2, 2009

Carlito P. Caliboso, Chair  
Public Utilities Commission  
465 S. King Street #103  
Honolulu, HI 96813

Dear Chair Caliboso:

SUBJECT: MOLOKAI PUBLIC UTILITIES AND WAIOLA O  
MOLOKAI'S APPLICATION FOR WATER RATE INCREASE

I am writing in opposition of Molokai Ranch's water utilities application for a general rate increase. Last year, Molokai Ranch gave notice that they would be shutting down at the end of August, basically shirking their responsibilities to the community that they served. Although the PUC disallowed this action, the Ranch's utilities were granted a "temporary" 6-month rate increase that remains in effect to this day! The residents impacted with this exorbitant expense have already been hit by unemployment and inflation.

Now, Molokai Ranch through its utilities has filed a new application for a general rate increase that is up to five times of what residents were paying last May. In addition the utilities expect the residents to pay up to five times the fees for fire protection and meter reading and surcharges for escalating fuel costs. The residents can't even afford the temporary rates already imposed!

For the last year, the residents have had to literally pay the price for the failings of Molokai Ranch. Trying to break their backs and their resolve with an unfathomable rate increase is not the answer. The recent ruling by the First Circuit Court determining that Molokai Ranch and its public utilities are one in the same corporation means a greater source of capital to tap into. Sell off the assets to pay for the system. Don't unfairly put the back burden on the residents!

Respectfully,

A handwritten signature in black ink, reading "Danny A. Mateo". The signature is stylized with a large, sweeping "M" and a long, trailing "o" at the end.

DANNY A. MATEO  
Council Chair

**BRONSTER HOSHIBATA**

A Law Corporation

Margery S. Bronster #4750

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Jeannette H. Castagnetti #7211

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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED.

2009 AUG 10 AM 8:46

J. KUBO

CLERK

**DEPARTMENT OF THE CORPORATION COUNSEL**

County of Maui

Brian T. Moto #5421

Jane E. Lovell #7551

Edward S. Kushi, Jr. #2401

200 South High Street

Wailuku, Hawaii 96793

Telephone: (808) 270-7740

Facsimile: (808) 270-7152

Attorneys for Appellee County of Maui

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT**

**STATE OF HAWAII**

MOLOKAI PROPERTIES LIMITED  
f/k/a MOLOKAI RANCH, LIMITED,

Appellant,

v.

DEPARTMENT OF HEALTH, STATE  
OF HAWAII, COUNTY OF MAUI,  
MOLOKAI PUBLIC UTILITIES, INC.,  
WAI'OLA O MOLOKAI, INC., MOSCO,  
INC.,

Appellees.

and

) Civ. No. 08-1-1877-08 EEH  
) (Agency Appeal)  
)  
) ORDER AFFIRMING HEARINGS  
) OFFICER'S FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) DECISION AND ORDER DATED  
) AUGUST 14, 2008  
)  
)  
)  
) Oral Argument:  
) Date: July 15, 2009  
) Time: 11:30 a.m.  
) Judge: Eden Elizabeth Hifo

I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

COUNTY OF MAUI,

Appellee/Intervenor.

**ORDER AFFIRMING HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, DECISION AND ORDER DATED AUGUST 14, 2008**

After considering briefs and oral argument by the parties, the Court finds that there were no violations of due process or judicial practices in the administrative proceedings below. The Court further finds that there were no errors of law or clearly erroneous findings of fact by the hearings officer.

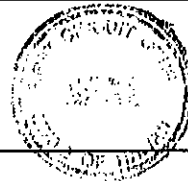
Accordingly, pursuant to Haw. Rev. Stat. § 91-14(g), the Court AFFIRMS the Findings of Fact, Conclusions of Law, Decision and Order dated August 14, 2008 entered in Department of Health Docket Nos. 08-SDW-E0-01 and 08-WW-E0-01.

**AUG 06 2009**

DATED: Honolulu, Hawaii, \_\_\_\_\_

EDEN ELIZABETH HIFO

EDEN ELIZABETH HIFO  
JUDGE OF THE ABOVE ENTITLED COURT



Approved as to Form:

*Edward G. Bohlen*

EDWARD G. BOHLEN  
Deputy Attorney General  
Attorney for Appellee Department of  
Health State of Hawaii

*James N. Duca*

JAMES N. DUCA  
MALIA SCHRECK  
Attorneys for Appellant  
Molokai Properties Limited f/k/a  
Molokai Ranch, Limited

  
YVONNE Y. IZU

Attorney for Appellees  
Molokai Public Utilities, Inc.,  
Wai'ola O Molokai, Inc., and  
Mosco, Inc.

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ORDER AFFIRMING HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF  
LAW, DECISION AND ORDER DATED AUGUST 14, 2008; Molokai Properties Ltd. v.  
Department of Health, State of Hawaii, et al., Circuit Court of the First Circuit, State  
of Hawaii, Civil No. 08-1-1877-08 EEH.

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	Docket No. 08-SDW-EO-01
STATE OF HAWAII	)	
Complainant,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
vs.	)	DECISION, AND ORDER.
	)	
MOLOKAI PUBLIC UTILITIES, INC.,	)	
WAI'OLA O MOLOKAI, INC.,	)	
MOLOKAI PROPERTIES LIMITED	)	
f/k/a MOLOKAI RANCH, LIMITED,	)	
	)	
Respondents.	)	

AND

DEPARTMENT OF HEALTH,	)	Docket No. 08-WW-EO-01
STATE OF HAWAII	)	
Complainant,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
vs.	)	DECISION, AND ORDER.
	)	
MOSCO, INC.,	)	
MOLOKAI PROPERTIES LIMITED	)	
f/k/a MOLOKAI RANCH, LIMITED,	)	
	)	
Respondents.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

These administrative contested cases came on for hearing on July 22, 2008 before Thomas P. Rack, Hearings Officer, with Respondent, Molokai Properties Limited, f/k/a Molokai Ranch, Limited, Molokai Public Utilities, Inc., Wai'ola O Molokai, Inc., and Mosco, Inc. being represented by Daniel Orodener, Esq., and the Department of Health, State of Hawaii, Safe Drinking Water Branch and Wastewater Branch being represented by Deputies Attorney General, Edward Bohlen and William Cooper. On request made by Mr. Orodener, the hearing in these matters was continued to July 30, 2008.

08-SDW-EO-01  
08-WW-EO-01

**EXHIBIT A**

I hereby certify this document as  
a complete, true and correct copy  
of the original on file in this office.



On July 30, 2008, these contested cases again came on for hearing before Thomas P. Rack, Hearings Officer, with Respondent, Molokai Properties Limited, f/k/a Molokai Ranch, Limited ("MPL" or "Molokai Ranch") being represented by James Duca, Esq., Molokai Public Utilities, Inc. ("MPU"), Wai'ola O Molokai, Inc. ("Waiola"), and Mosco, Inc. ("Mosco") being represented by Yvonne Izu, Esq., the Department of Health ("Complainant" or "DOH"), State of Hawaii, Safe Drinking Water Branch ("SDW branch") and Wastewater Branch ("WW branch") being represented by Deputies Attorney General, Edward Bohlen and William Cooper, and Intervenor, County of Maui ("COM"), being represented by Deputies Corporation Counsel Jane Lovell and Edward Kushi, Jr..

Based upon the testimony and evidence presented, and the record and pleadings in this case, the Hearings Officer, having been delegated final decision-making authority by the Director of Health ("Director"), makes the following Findings of Fact and Conclusions of Law, Decision, and Order:

#### **FINDINGS OF FACT**

1. Molokai Public Utilities, Inc. ("MPU") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.
2. MPU is a privately owned public utility authorized to provide water service in the Kaluakoi area on the West end of the island of Molokai, State of Hawaii. MPU provides drinking and irrigation water to the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands, Moana Makani subdivisions and Maui County parks.

3. MPU was granted a certificate of public convenience and necessity ("CPCN") by the Public Utilities Commission ("PUC") on October 29, 1981.
4. MPU is a wholly owned subsidiary of Kaluakoi Water, LLC. Kaluakoi Water, LLC is a wholly owned subsidiary of Kaluakoi Land, LLC. Kaluakoi Land, LLC is a wholly owned subsidiary of MPL.
5. There is no record as to when MPU last held a board of director's meeting.
6. Wai'ola O Molokai ("Waiola") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.
7. Waiola is a privately owned public utility authorized to provide water service to businesses, residences, churches, and Maui County parks located in the Maunaloa, Kualapuu, Kipu, Manawainui, and Molokai Industrial Park areas of the island of Molokai, State of Hawaii.
8. Waiola was granted a CPCN by the PUC on October 29, 1993.
9. Waiola is a wholly owned subsidiary of MPL.
10. There is no record as to when Waiola last held a board of director's meeting.
11. The water distribution and treatment systems at MPU and Waiola utilize both surface and underground sources of water.
12. Surface water sources for drinking water undergo treatment as such waters can contain contaminants and microorganisms. Surface water treatment is a two step process of filtration and disinfection.
13. The microorganisms and pathogens in surface and sub-surface water, if left untreated, can cause gastrointestinal illness and disease in humans, and even death.



14. Mosco, Inc. ("Mosco") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.
15. Mosco is a privately owned public utility authorized to provide wastewater service in the Kaluakoi area on the West end of the island of Molokai, State of Hawaii. Mosco provides wastewater collection and treatment services to the Kaluakoi Resort, Ke Nani Kai and Paniolo Hale Condominiums, Kaluakoi Villas, Papohaku Ranchlands, Moana Makani subdivisions.
16. Untreated or improperly treated domestic (human) sewage (a/k/a wastewater) contain microbes and pathogens which are harmful to humans and can cause illness and even death. Those who are exposed to untreated or improperly treated sewage can become ill may pass these illnesses to others.
17. Mosco is a wholly owned subsidiary of Kaluakoi Sewers, LLC. Kaluakoi Sewers, LLC is a wholly owned subsidiary of Kaluakoi Water, LLC. Kaluakoi Water, LLC is a wholly owned subsidiary of Kaluakoi Land, LLC. Kaluakoi Land, LLC is a wholly owned subsidiary of MPL.
18. Kaluakoi Sewers, LLC, Kaluakoi Water, LLC, and Kaluakoi Land, LLC are holding companies and have no employees.
19. Mosco was granted a CPCN by the PUC on October 29, 1982.
20. There is no record as to when Mosco last held a board of director's meeting.
21. Molokai Properties Limited ("MPL") is a Hawaii corporation whose business address is 745 Fort Street, Suite 600, Honolulu, HI 96813.

22. On November 1, 2002, Molokai Ranch, Limited filed a request with the Hawaii Department of Commerce and Consumer Affairs to change the corporate name of Molokai Ranch, Limited to Molokai Properties Limited.
23. Peter Nicholas is the sole officer and/or director of MPU, Waiola and Mosco, as of July 1, 2008.
24. Peter Nicholas is the sole officer and/or director of MPL.
25. MPL, Waiola, MPU, and Mosco all share the same office space.
26. By letter dated May 2, 2006, DOH issued a General Permit for Treatment Works for the Maunaloa Wastewater Treatment facility to MPL, as the named permittee.
27. By letter dated May 2, 2006, DOH issued a General Permit for Treatment Works for the Kualapuu Wastewater Treatment facility to MPL, as the named permittee.
28. In or around the latter part of March 2008, MPL advised the PUC, the COM, the Governor of Hawaii and others that MPL would no longer be able to monetarily subsidize the water utilities, Waiola, and MPU, and services from these utilities would terminate at the end of August 2008. MPL also advised that Mosco would likely cease operations when Waiola and MPU stopped providing services.
29. From the period of June 30, 2006 to May 31, 2008, Waiola had an operating loss of \$294,178.00. This loss was covered with funds from MPL.
30. In Docket No. 7122 before the PUC, the PUC found that Molokai Ranch sought a CPCN through Waiola as Molokai Ranch made improvements to the Maunaloa treatment and distribution system and believed that by becoming a public utility

through Waiola, Molokai Ranch might recover the improvement costs and future costs.

31. From the period of June 30, 2006 to May 31, 2008, MPU had an operating loss of \$1,064,872.00. This loss was covered with funds from MPL.
32. From the period of June 30, 2006 to May 31, 2008, Mosco had an operating gain of \$186,403. However, Mosco believes it cannot continue to operate at a profit if Waiola and MPU cease operations. Furthermore, Mosco advised that it will only continue to operate provide it suffers no losses.
33. Waiola, MPU and Mosco share three employees who work at each of the entities' facilities. These same employees also perform work for the water and sewer operations of MPL.
34. Since at least 2001, if not several years earlier, both MPU and Waiola have been operating at losses and have been subsidized by funds from MPL.
35. MPL provides administrative services through MPL employees for MPU, Waiola, Mosco and MPL's water companies, and these administrative costs are allocated to each utility.
36. The financial controller of MPL has authority to transfer funds directly from MPL's bank account(s) to MPU and Waiola via the bank's website.
37. MPL owns water system assets such as reservoirs, pipes, water tanks and piping running on and/or through land owned by MPL.
38. MPU, Waiola and Mosco have not sought PUC rate increases for the last several years.

39. On or about June 2008, the PUC issued an "Order Instituting a Proceeding to Provide Temporary Rate Relief to Molokai Public Utilities, Inc., Wai'ola O Molokai, Inc., and Mosco, Inc., Docket No. 2008-0115".
40. MPU, Waiola and Mosco did not request the rate relief proceedings mentioned in Findings of Fact No. 39.
41. On or about July 14, 2008, MPL filed a "Motion to Modify Order of June 23, 2008 Directing Molokai Properties, LTD. To Participate in Docket No. 2008-0115". In said Motion, MPL stated that if rate relief is granted to MPU and Waiola, no adjustment to the rates being charged by Mosco would be necessary.
42. The financial figures the PUC are using to calculate the proposed temporary rate relief for MPU and Waiola are based on calendar year 2007 income and expenses. MPL's financial controller noted that MPU and Waiola's fiscal year 2008 financial records show significantly larger expenses than the calendar year 2007 figures.
43. Mosco, Waiola and MPU represented they will continue to operate and provide drinking and wastewater services provided they suffer no losses.
44. Waiola issues payroll checks for the employees of Waiola, MPU and Mosco.
45. Without a sustained and reliable source of water, existing wastewater services and fire hydrants cannot be maintained.
46. The lack of a sustained and reliable source of safe drinking water in West Molokai will create a substantial danger to the public health and safety in that community.

47. Some 1,200 units are currently being served by MPU, Waiola, Mosco, and/or MPL. These units do not reflect the number of people who will be impacted if the utilities cease operations.
48. Failure to properly operate and maintain wastewater systems may lead to raw or untreated sewage spills.
49. The lack of wastewater transmission and treatment facilities in West Molokai will create a substantial danger to the public health and safety in that community.
50. The cessation of drinking water and wastewater services by MPU, Waiola, Mosco, and/or MPL is an imminent peril to the public health and safety.
51. On July 21, 2008, the Director served an Order on MPU, Waiola and MPL in Docket No. 08-SDW-EO-01 requiring MPU, Waiola, and MPL, for the next ninety (90) days to:
1. Continue to operate the Maunaloa-Kaluakoi, Kualapuu and Kipu public water systems (water systems) and comply with all provisions of HRS Chapters 340E and Chapters 11-19, 11-20 and 11-25, HAR.
  2. Continue to operate the surface water treatment plant for the Maunaloa-Kaluakoi public water system at Puu Nana and meet all provisions of the Surface Water Treatment Rule, §11-20-46, HAR.
  3. Continue to operate the public water systems with certified Distribution System Operators and certified Water Treatment Plant Operators and comply with all provisions of HRS Chapter 340F and Chapter 11-25, HAR.
  4. Submit a written report to the DOH every seven days on the status of its operations of the public water systems at issue.
52. On July 21, 2008, the Director served an Order on Mosco and MPL in Docket No. 08-WW-EO-01 requiring Mosco and MPL, for the next ninety (90) days to:
1. Continue to operate the Kaluakoi, Maunaloa, and Kualapuu wastewater systems and comply with all provisions of HRS Chapter 342D and Chapter 11-62, HAR.

2. Continue to operate the wastewater systems with certified wastewater treatment plant operators and comply with all provisions of HRS Chapter 340B and Chapter 11-61, HAR.
3. Submit a written report to the DOH every seven days on the status of its operations of the wastewater systems at issue.

### CONCLUSIONS OF LAW

1. To the extent that any of the foregoing Findings of Fact are deemed to be Conclusions of Law, they are incorporated herein as Conclusions of Law. Should any of the Conclusions of Law be deemed Findings of Fact, the same are incorporated into the Findings of Fact.

2. County of Maui is a proper party to intervene in these proceedings.

3. Hawaii Revised Statutes ("HRS") §340E-4, provides, in pertinent part:

The director, upon learning that a contaminant is present in or is likely to enter a public water system or an underground source of drinking water and may present an imminent and substantial danger to the public, may take such actions necessary to protect the health of the public. The actions which the director may take include but are not limited to:

(1) Issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including the provision of alternative water supplies by persons who caused or contributed to the endangerment.

4. HRS §340E-5, provides, in pertinent part:

The director shall promulgate a plan for the provision of safe drinking water under emergency circumstances. When the director determines that emergency circumstances exist in the State with respect to a need for safe drinking water, the director may take such actions as necessary to provide water where it otherwise would not be available.

5. HRS §340E-7 (a), (c), (e) and (f), provide, in pertinent part:

(a) No supplier of water shall violate any rule adopted pursuant to section 340E-2.

(c) No supplier of water shall violate any requirement of an emergency plan promulgated pursuant to section 340E-5.

(e) No person shall violate any order issued by the director pursuant to this part.

(f) No person shall cause a public water system to violate the state primary drinking water regulations.

6. The threatened cessation of drinking water provision and treatment by MPU, Waiola, and/or MPL will likely lead to the presence of contaminants in a public water system and presents an imminent and substantial danger to the public.
7. HRS §§340E-4 and 340E-5 do not require that DOH first find a violation before ordering actions to protect public health where a contaminant is likely to enter a public water system and may present an imminent and substantial danger to the public.
8. HRS §342D-4, provides, in pertinent part:

... the director shall prevent, control and abate water pollution in the State and may control all management practices for domestic sewage, sewage sludge, and recycled water, whether or not such practices cause water pollution.
9. HRS §342D-10, provides, in pertinent part:
  - (a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste, any combination of discharges of waste, or any management practice that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop the discharge or to reduce, stop or change the management practice, and may take any and all other actions as may be necessary. The order shall fix a time and place, not later than twenty-four hours thereafter, for a hearing to be held before the director. Management practices covered in this subsection are those

for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution.

10. The threatened cessation of wastewater system treatment and maintenance in West Molokai by Mosco and/or MPL will likely lead to the discharge of untreated waste and presents an imminent and substantial peril to the public health and safety.
11. Given the imminent and substantial danger to public health, the Director has the legal authority under statutes and rules to order MPU, Waiola, Mosco, and MPL to act, over the next ninety days, to avoid a potential emergency and to protect the public health.
12. It is extremely likely the PUC's proposed temporary rate relief will be insufficient to cover current operating expenses for MPU, Waiola, Mosco and/or MPL and thereby will result in losses to the companies.
13. It is extremely likely that MPU, Waiola, Mosco, and/or MPL will incur losses, notwithstanding a temporary rate increase granted by the PUC, and will cease drinking water and wastewater services on or about September 1, 2008. Such a cessation of drinking water and wastewater services will cause an imminent and substantial danger to the public health and safety.
14. Kaluakoi Sewers, LLC, Kaluakoi Water, LLC, and Kaluakoi Land, LLC are mere holding companies of the assets of MPU and Mosco.
15. MPU, Waiola, Mosco and MPL have not observed corporate formalities and share the same single officer/director. This individual is also the sole officer and/or director of MPL.



16. MPL is the *alter ego* of MPU, Waiola and Mosco and therefore subject to the Orders of the Director of Health.

### **DECISION**

It is undisputed the planned cessation of drinking water and wastewater services by MPU, Waiola, Mosco and MPL will cause a substantial public health crisis in West Molokai.

The Director of Health has various emergency powers as reflected in the statutes and administrative rules to prevent imminent and substantial danger to the public health and safety. While it is arguable that the cessation of drinking water and wastewater services is not "imminent" under that term's definition; it does appear clear to this Tribunal that MPU, Waiola, Mosco, and/or MPL will cease utility operations as stated. Although the utilities claim continued operations, this assertion is also predicated on incurring no operational losses. However, loss is almost certain to occur as the PUC's proposed rate relief is based on income and expenses which are not current. MPL, on behalf of the utilities has already indicated the 2008 operating expenses are higher than the 2007 numbers being contemplated by the PUC. Therefore, the planned shut-down of the utilities is impending and the public health danger is imminent.

MPU, Waiola, and Mosco all have Certificates of Public Convenience and Necessity granted by the Public Utilities Commission. Under these grants, the utilities are, in essence, given a monopoly to operate in specific geographic regions and charge rates approved by the Commission. In determining whether a utility should be granted a CPCN, the PUC requires the applicant to furnish a statement of financial ability to render the proposed service as well as the applicant's financial statement. HRS §269-7.5. As reflected in PUC Docket No. 7122, Molokai

Ranch Limited<sup>1</sup> placed its financial backing behind Waiola in order to obtain the CPCN.

Therefore, at least as far back as 1993, Molokai Ranch knew that the utilities would not be self sustaining and could only operate with funds being provided by the parent company. The evidence in this matter also confirms the inability of these utilities to operate independently.

Hence, the need for cash subsidies by MPL. Arguably, the PUC would not have granted CPCNs if it believed the backer of these utilities could abandon its financial support and allow the utilities to cease operation.

MPL argued that it is not the owner or operator of the utilities in question and therefore the DOH has no jurisdiction over this corporate entity. However, the alter ego doctrine has been adopted by the courts in cases where the corporate entity has been used as a subterfuge and to observe such corporate identities would work an injustice. *Robert's Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc.*, 91 Hawai'i 224, 241, 982 P.2d 853, 870 (1999). Various factors are examined to determine if the corporate entity is the alter ego of another. As the Court noted in *Robert's Hawaii School Bus*, citing *Associated Vendors, Inc. v. Oakland Meat Co., Inc.*, 210 Cal.App.2d 825, 26 Cal.Rptr. 806, 813 (1962), commingling of funds and assets; failure to segregate funds of separate entities; identical equitable ownership in the entities; domination and control of one entity by another; same officers and directors responsible for the management and control of the entities; use of the same office space; employment of the same employees; the failure to adequately capitalize an entity; the use of a corporate entity as a mere shell, instrumentality or conduit for a single venture or the business of another corporation; disregard of legal formalities and the failure to maintain arm's length relationships among related entities;

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<sup>1</sup> The corporate name of Molokai Ranch, Limited was changed to Molokai Properties Limited in 2002.

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and the use of the corporate entity to procure labor, services or goods for another entity are factors to be weighed in applying the alter ego doctrine. In addition, such other factors can be examined, such as, incorporation for the purpose of circumventing public policy; whether the parent finances the subsidiary; whether the subsidiary has no business or assets except those conveyed to it by the parent; whether the parent uses the subsidiary's property as its own; and whether the directors of the subsidiary do not act independently in the interest of the corporation but take their orders from and serve the parent. *Robert's Hawaii School Bus, Inc. v.*

*Laupahoehoe Transp. Co., Inc.*, 91 Hawai'i at 242, 982 P.2d at 871, citing, *Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 717 (7<sup>th</sup> Cir. 1965).

In the instant matter, numerous of the aforementioned factors are present to the extent that MPL is the alter ego of MPU, Waiola and Mosco, notwithstanding the intermediate holding companies. For many years, MPL provided financial subsidies to the utilities to cover their operating losses. In fact, MPL's financial controller has authority to transfer funds from MPL's account(s) to the utilities whenever necessary. Employees for the three utilities are shared and also perform work for the parent company, MPL. All of the companies share the same office space and MPL's administrative employees perform services for the utilities. MPL, Mosco, Waiola, and MPU also share the same single officer and/or director. MPL's attorney filed pleadings in PUC Docket No. 2008-0115 wherein he represented that no rate adjustment would be necessary for Mosco. MPL represented itself as the applicant for wastewater treatment facility permits for the Maunaloa and Kualapuu wastewater treatment plants. In fact, the permits were issued to MPL, as the permittee. Mosco, Waiola and MPU have not held board of directors meetings in recent times and this suggests a lack of observing corporate formalities. MPL's

General Manager requested a continuance of these proceedings on behalf of MPL, Waiola, MPU and Mosco. All of these factors demonstrate the MPL controls MPU, Waiola, and Mosco and is the alter ego of these entities.

The announced shutdown of water treatment and delivery systems by Waiola and MPU will likely lead to the presence of contaminants in the water systems and the Director has the authority to abate and prevent such occurrences. Likewise, the shutdown of the wastewater collection and treatment systems operated by Mosco will likely cause raw and untreated sewage to be discharged creating a public health nuisance. Again, the Director has the power to prevent such occurrences.

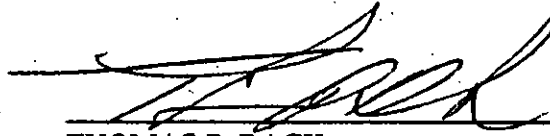
Under the Director's emergency powers, the Orders, in both dockets, to continue to operate the drinking water and wastewater systems are justified, reasonable and necessary. These Orders are also applicable to MPL.

### **ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, and Decision, it is hereby ORDERED:

1. The Director of Health's July 21, 2008 Order in Docket No. 08-SDW-EO-01 is hereby AFFIRMED.
2. The Director of Health's July 21, 2008 Order in Docket No. 08-WW-EO-01 is hereby AFFIRMED.

DATED: Honolulu, Hawaii, August 14, 2008.

A handwritten signature in black ink, appearing to read 'T. Rack', written over a horizontal line.

THOMAS P. RACK  
Hearings Officer